

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KIRSHA BROWN,

Plaintiff,

v.

RTC VEOLIA TRANSPORTATION,

Defendant.

2:10-cv-00643-JCM-LRL

O R D E R

Plaintiff has submitted an Application to Proceed *In Forma Pauperis* and a Complaint (#1). The court finds that plaintiff is unable to prepay the filing fee. Further, although the court will dismiss the Complaint, it will do so without prejudice to allow plaintiff to cure the deficiencies listed below.

I. In Forma Pauperis Application

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing that she is unable to prepay fees and costs or give security for them. Accordingly, her request to proceed *in forma pauperis* will be granted pursuant to § 1915(a).

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. § 1915(e)(2). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009) (internal quotations and citation omitted).

1 In considering whether the plaintiff has stated a claim upon which relief can be granted, all
2 material allegations in the complaint are accepted as true and are to be construed in the light most
3 favorable to the plaintiff. *Russel v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of a pro
4 se complaint are held to less stringent standards than formal pleading drafted by lawyers. *Haines v.*
5 *Kerner*, 404 U.S. 519, 520 (1972) (per curiam). When a court dismisses a complaint under § 1915(e),
6 the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies,
7 unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment.
8 *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citation omitted).

9 Plaintiff filed her Complaint against “RTC/Veolia Transportation” using the court’s § 1983 civil
10 rights complaint form. She seeks 15 million dollars in damages for “assault, battery & bus driver
11 handing pepper spray to passenger.” The substance of plaintiff’s allegations reveals, however, that she
12 is not alleging a civil rights violation under § 1983. The Complaint alleges that an RTC (Regional
13 Transit Commission) bus driver assisted a passenger in assaulting her physically and with pepper spray.
14 Nor can plaintiff establish that the allegations are traceable to the state. *See Blum v. Yaretsky*, 457 U.S.
15 991, 1002-12 (1982) (private persons who are not government officials may be sued under § 1983, but
16 they and their actions must be very closely tied to the government in order to be considered “acting
17 under color of state law”). Plaintiff’s Complaint must be dismissed for failure to state a claim upon
18 which relief may be granted under § 1983. *See Fed. R. Civ. P. 12(b)(6)*. Plaintiff will, however, be
19 given an opportunity to cure the deficiencies listed above.

20 Accordingly, and for good cause shown,

21 IT IS ORDERED that plaintiff’s Application to Proceed *In Forma Pauperis* (#1) is GRANTED.

22 IT IS FURTHER ORDERED that plaintiff is permitted to maintain the action to conclusion
23 without necessity of prepayment of any additional fees, costs, or security. This Order granting *forma*
24 *pauperis* status shall not extend to the issuance of subpoenas at government expense.

25 IT IS FURTHER ORDERED that the Clerk of Court shall file the Complaint.

1 IT IS FURTHER ORDERED that the Complaint will be dismissed without prejudice.

2 IT IS FURTHER ORDERED that plaintiff shall file an amended complaint by September 13,
3 2010 or her case may be dismissed with prejudice.

4 DATED this 12th day of August, 2010.

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7 **LAWRENCE R. LEAVITT**
8 **UNITED STATES MAGISTRATE JUDGE**
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